A Sniff Test for Evaluating Environmental Regulatory Reinvention Projects

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Regulatory innovation. Environmental cooperation pilot projects. Voluntary pollution prevention partnerships. Where are all these new, planet-saving programs coming from and where are they going? Who are the winners and who are the losers when "cleaner, smarter and cheaper" come to town-or will it truly be win-win, as the promoters of these projects are trying to sell us?

The purposes of this paper are to provide a perspective from the environmental community on the plethora of environmental cooperation programs, partnerships and pilot projects that are either underway or under consideration and to suggest a set of criteria for evaluating their efficacy.

Let us start by stating that we are not necessarily opposed to environmental regulatory innovation proposals. The current regulatory system does need some changes-we might call it "tweaking" as opposed to some of the regulatory reinvention leaders who call for "fixing" of the system. We are starting from the position that the current system has been successful in achieving a significant degree of environmental improvement and must remain in place to continue to do so. It is critical that the existing, underlying environmental regulatory system in this country forms the framework and the backup for any proposed "innovations."

We do not disagree with the basic philosophical underpinnings of some of the new approaches that are being discussed. It is hard to argue with cleaner, cheaper and smarter; however, as we all know, the devil is in the details. How do you make this work in ways that promote full participation by all who need to be involved and provide tangible, verifiable environmental, institutional and economic improvements?

Simply stated, we support any system that challenges businesses and others to positively and significantly contribute toward achieving a healthy environment. All systems, including the existing one, must be held to this standard. Below we present a set of criteria for evaluating how well regulatory innovation programs or pilot projects meet this standard. The same level of scrutiny should also be applied to current regulatory and enforcement programs.

There are many pilot projects out there and more on the way. It is much too early to head all the wagons down this newly cleared path unless and until these pilots are completed, thoroughly evaluated and compared, and the lessons learned are fed back into the system. This hasn't happened yet. We just don't know whether these types of projects will provide tangible benefits for public, environmental and economic health.

It is also important for state and federal environmental agency regulatory staffs to remember whom their clients are. We have heard the term "client" used way too often lately in the halls of state and federal government agencies. Your top clients are neither industry nor environmental groups. Your most important clients are public and environmental health. All these regulatory innovation proposals must serve these first and the rest of us second.

With this in mind, we have developed the following criteria for evaluating regulatory innovation proposals, cooperative environmental programs and pilot projects. Based on the collective experience of the authors in both critiquing and participating in these efforts, we call this set of criteria The Sniff Test. We want to make sure that these projects smell OK before moving ahead. In fact, we believe that these

types of projects should affirmatively demonstrate high levels of public benefit--they should smell really good--before leaving the starting gate.

1. Will the project result in real, verifiable environmental improvement?

This is the real bottom line. This first criterion in effect asks, "Does this project make sense?" It might be cheaper, and maybe it's smarter, but is it really cleaner? Will the air be more breathable, the water more drinkable, the fish more edible? It is critical to avoid projects whose top priority is "greenwash" for a facility or trade association. They can do that on their own - they shouldn't involve the agency and other stakeholders.

2. Why can't the goals of the project be achieved under the existing regulatory framework?

Most of these projects involve the implementation of an environmental management system (EMS), which potentially bestows positive benefits to both the company and the community in which it is located. If there will indeed be real benefits from an EMS, why must regulatory concessions be secured from the state agency and assurances received from the U.S. EP A that it will not stick its nose where the company doesn't want it? At a minimum, there should be a demonstration that barriers to environmental progress exist, that should be addressed by the regulatory agency. Will this project open the door for all facilities to expect the same treatment from the state agency? Will the way that the agency implements state or federal environmental laws be fundamentally changed or significantly eroded by the concessions granted to this single facility or class of facilities?

3. What regulatory relief is being considered? What will be the corresponding public benefits?

Is the regulated facility(s) asking for "the moon and the stars" in terms of regulatory relief? What regulatory concessions are the company or trade association asking for in return for participation in this project. Which "non-standards related aspects of rules, policy and guidance" are negotiable? Will the number or types of pollutants in permits be changed and how? Will reductions in monitoring and/or reporting be considered? What

other "regulatory relief is being sought? What public and environmental health benefits are anticipated based on the requested changes? One of the dilemmas faced in some of these projects is how to determine if we are achieving the environmental and public health benefits promised by the project if the types and amounts of pollutant monitoring are being decreased in return for these promises.

4. What is the role of the state regulatory agency-facilitator, regulator, granter of variances or all of the above?

It is very difficult for an agency to simultaneously play several different roles in one project. The more effective projects are those where an outside facilitator is brought in so that the agency can maintain its regulatory stance and not have to facilitate the process as well. By statute, state environmental agencies are air, water and land "cops" and industrial facilities are "permitted entities", not "clients." It is important that this relationship be maintained throughout the project. A critical question for the agency is: "How will agency efforts to protect the environment be improved based on this project?"

5. Does the proposed project or program go "beyond compliance" in meaningful ways? How will this be accomplished?

Is effective pollution prevention and waste reduction being proposed? Is the facility or trade organization thinking beyond process line or "housekeeping" types of pollution prevention-toward incorporating clean production, product stewardship and life cycle analysis concepts? Will this project address environmental impacts of production, use and disposal of products? .

6. Are there clearly stated, realistic environmental improvement goals and objectives?

Are all the stakeholders being consulted in setting goals and objectives? Are the goals aggressive enough? Do they seem "doable"? Has an appropriate timetable been agreed upon? How will neighbors of a facility know that the company is achieving continuous environmental improvement?

7. Will this project shift environmental benefits and burdens among environmental media and/or social sectors?

Will implementation of this project result in cross-media transfers of pollutants in lieu of real environmental loading reductions? Will certain populations or geographical areas be subject to greater emissions of pollutants as a result of the project? Will this project create or resolve environmental injustices? Will it displace cleanup of environmental problems to future generations?

8. Is the contemplated agreement enforceable? Does the agency have an effective enforcement program, if needed?

Will the agreement be incorporated into the permit(s) that the agency issues to the company(s) involved or will it be made legally binding in some other fashion? Are the rights of plant neighbors spelled out in the agreement? Does the agency have the resources and the willingness to enforce violations of the agreement? Do citizens have the right to petition to enforce the agreement?

9. What entity(s) is involved-a single production line, a facility, a business sector, a trade association? How does this affect the resources needed, the transferability of the lessons learned etc.?

Is the proposed process/project meant, if successful, to be applicable to many facilities or could it only be used for one or a limited number of facilities or situations? In other words, is this just one company trying to get a break with results that will have no application anywhere else? Will the trade association(s) commit to sharing the lessons learned with all of its members and beyond?

10. Do citizens have a meaningful role?

Do neighbors, communities and citizen groups have the potential and the opportunity to change the outcome of the project? Have the project boundaries been set ahead of time by the industry and/or regulatory agency? Has a mix of employees, neighbors, community members and resource people (e.g. local or state academicians, environmental groups, public health officials and medical professionals) been identified and recruited to participate?

11. Will all stakeholders be provided the resources, training and information necessary to effectively participate?

Facilitating meaningful public participation is neither easy nor cheap. The environmental and safety manager and the plant's next door neighbor do not start the process on equal terms. Will the industry or the agency take responsibility for helping to create a level playing field for all project stakeholders? Will all participants be brought up to speed on the key issues and provided adequate data for evaluating those issues? Will independent, technical assistance be provided, if needed?

12. Are the resources there to assure successful completion of the project?

Although one of the hoped for results of most of these projects is a cheaper way to achieve environmental protection and improvement, the regulatory innovation projects themselves are not necessarily cheap. Significant staff resources are often needed to evaluate and to try new ways of doing business. Have the key participants committed enough resources to see this project through a complete cycle, including evaluation and feedback, or will they start cutting comers in order to finish it and then move on?

13. What are the agency and public costs associated with this project?

How much of the agency's resources will be committed to the project? What are the opportunity costs, i.e. what won't the agency be doing as a result of participating in this project? Are already weakened enforcement programs at risk of further erosion due to diversion of staff to regulatory innovation projects?

14. How and when will measurement and evaluation be done? What feedback loops are in place?

The old phrase "what doesn't get measured, doesn't get done" certainly applies here. How will all project stakeholders know what progress is being made? Will the evaluation focus on ecological, institutional and socio-economic issues? How will we know if improvement is actually occurring? Will the stakeholders be able to help design the measurement and evaluation system for the project? Is the baseline used for comparison from last year, last decade or last century? Will measurement results be used to adjust activities throughout the life of the project?

15. What will be learned and transferred to other facilities, other sectors, other agencies and other communities?

This is perhaps the most important question of all. The reason for testing out new ideas and new approaches in a pilot project approach is to figure out what works and what doesn't, and then share this crucial information with others. Environmental programs evolve through this type of experimentation at the margins, followed by dissemination of both positive and negative results throughout the regulator and regulated communities. It is imperative that provisions be made at the start of the project for extensive sharing and broad dissemination of key results during and after the experiment.

These criteria should be applied to new proposals for regulatory innovation projects." This list should be considered a menu to choose from, in terms of which criteria to apply to the project under consideration. Not all criteria will apply to all projects, however it is envisioned that most criteria will apply to most projects.

Perhaps more important, the focus should be on evaluating the results of existing pilots, projects and programs in order to extract key lessons to be applied to the next round of projects. What have we really learned so far and how will this be applied to the design of upcoming projects? It is neither wise nor appropriate to create a new generation of projects without benefiting from the lessons learned from the current generation.

The authors welcome your feedback on this article, as well as information about "lessons learned" in environmental regulatory reinvention projects. Steve Skavroneck is the lead author and can be reached at Citizens for a Better Environment (CBE) in Milwaukee, Wisconsin. Susan Mudd is also with CBE and Caryl Terrell is with the Wisconsin Sierra Club Chapter. Liz Wessel is an environmental activist in Wisconsin and beyond.